THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

W.P.No.1419 of 1995

Dt. -04-2006

Between:

Singampalli Nukanna

..Petitioner

and

1. Govt. of A.P. rep. by its Secretary to Govt. Social Welfare (F)Department, Secretariat Buildings, Hyderabad and others.

..Respondents.

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Oral Order:

In this case, the petitioner obtained a Rule from this Court asking the respondents to show cause why a writ in the nature of Certiorari should not be issued under Article 226 of the Constitution for calling up and quashing the proceedings relating to G.O.Rt.No.811 dated 07-11-1994 whereunder the revision petition filed by the petitioner was dismissed confirming the orders passed by the 2nd respondent— Agent to the Government in C.M.A.No.22 of 1982 dated 08-05-1987.

The relevant facts shorn of details and necessary for disposal of the writ petition lies in a narrow compass are as under: On filing a complaint under Section 3 of A.P. Scheduled Areas (Land Transfer) Regulation I/59 as amended by Regulation I/70 by the Special Deputy Tahsildar (Tribal Welfare) for restoration of land to the 4th respondent and for due eviction of the petitioner notice contemplated in Form E was issued to show cause why he should not be evicted in L.T.R.No.134/81. On petitioner filing a counter, 4th respondent who was examined as P.W.1 stated that he belongs to "Konda Kapu" community; settlement patta was granted under Ex.P1 to his grand father—Dattam Appala Swami for the petition schedule land and he is not aware to whom the land was sold by his grand father which is under the possession and enjoyment of the petitioner herein who is a non-tribal. He has been working a Village Munsif of Koyyuru since 16 years and he is the native of Lagari village of Yellavaram taluk. The R.D.O. Peddapuram issued a caste certificate—Ex.P2. L.T.R. case filed against him in L.T.R. No.107/76 was decreed in his favour holding that he is a tribal under Ex.P3; his grand father did not obtain permission to sell away petition schedule land and the same should be restored to him. Petitioner herein who examined as R.W.1 stated that 4th respondent is a 'Kapu' but not tribal, the birth extract of the 4th respondent is R1; the grand father of the 4th respondent sold away the land to Challa Subbarayudu belongs to Kapu community and he obtained petition schedule land from Challa people and since then the lands were in his possession and enjoyment. The Tribunal after considering the oral and documentary evidence held that the petitioner who was examined as R.W.1 deposed that the 4th respondent is a non-tribal and recital in the document R2 and in the birth extract Ex.R1 the caste of the father of the 4th respondent was noted as Kapu, but the said documents are not conclusive proof to decide the caste of the individual. The R.D.O. who is the competent authority has issued caste certificate to the 4th respondent certifying him as 'Konda Kapu'. Further, in the enquiry under Ex.P3 it has been held that the 4th respondent is a tribal who got valid title over the land and entitled to restoration of possession of the land. The transaction of immovable property in scheduled area by a tribal to plains on or after 14-08-1917 without prior permission of the Agent to the Government or the Authorised Officer is null and void and accordingly ordered for eviction of the petitioner. Aggrieved by the eviction order petitioner unsuccessfully carried the matter in appeal before the Agent to Government in C.M.A.No.22 of 1982, where the appellate authority after considering

the documents filed by the petitioner to substantiate his plea that the 4th respondent is non-tribal belonging to Kapu community; that the extract of birth register and the sale deed are not directly concerned to the respondent and his name is not involved in both these documents held that he do not see any reason to interfere with the finding of the court below and accordingly dismissed the appeal. On revision filed by the petitioner, the claim of the petitioner that by virtue of a sale agreement executed in his name by a non-tribal, namely, Challa Rama Rao he came into possession of the land and since the transaction was from a non-tribal to another non-tribal it was not hit by the schedule laws was negatived holding that the scheduled land was granted in settlement to the grand father of the 4th respondent's husband and 4th respondent and her husband are tribals. Since the property was acquired by petitioner—non-tribal from a tribal on 02-09-1936, Section 4(1) of Agency Tracts Interest & Land Transfer Act, 1917 (for short "the Act 1/17") which was in force in the scheduled area by that time, the permission of the Agent to the Government or any prescribed officer is necessary before transfer of the immovable property from a tribal to non-tribal in the scheduled areas. In the absence of any such permission the transaction that occurred in 1936 and its subsequent transfer in favour of the petitioner was null and void and petitioner cannot claim any legal title over the land in question. The burden lies on the petitioner to substantiate his claim and he failed to discharge the burden under Regulation 5 of the Regulation I/59 and accordingly dismissed the revision.

Before filing revision petitioner filed W.P.No.6712 of 1987 in which this Court directed to maintain *status quo* with a liberty to the petitioner to file revision. On filing the revision the above said orders are passed which are now challenged in the present writ petition contending that the sale between the petitioner and his vendor which took place in the year 1965 where his vendor is a non-tribal and purchase or sale from a non-tribal to another non-tribal is permissible and no permission is necessary from the Agent to Government or any other Authorised Officer. On the compliant made by the 4th respondent that he is a tribal and his father in law belongs to Konda Kapu community, under Exs.R1 and R2, which are birth extract and caste certificate of the 4th respondent and his father were not properly taken into consideration while considering Ex.P1 and P2 relating to birth extract and caste certificate of the petitioner. Once the agreement of sale dated 01-05-1965 entered

into between the husband of 4th respondent's father and the petitioner is not in dispute, the same cannot be reopened. The transaction that took place prior to coming into force of Regulation I/70 cannot be interfered by the Special Deputy Collector, which is liable to set aside. Consequently the order passed by the appellate authority or revisional authority confirming the order of the Tribunal cannot stand judicial scrutiny.

Respondents 1 to 3 filed counter opposing the claim of the petitioner reiterating the factual aspects. It is stated that petition schedule land situated in agency tracts registered in favour of Dattam Appa Rao in the year 1935 and settlement patta was granted to him which was filed in the lower court and marked as Ex.P1. Act 1/17 was continued to be in force till A.P. Scheduled Areas (Land Transfer) Regulation I/59 came into force. Since first transaction took place on 02-09-1936 between the vendor—Dattam Appala Swamy and his sons and Challa Adiyya—vendee, who affixed his thumb impression on the document, which is illegal as it took place between a tribal and non-tribal without prior permission of the Agent to Government which is null and void. Section 4 of Act 1/17 prohibits transfer of immovable property by a member of hill tribe to a non-tribal. All the courts below concurrently have not accepted the plea of the petitioner and held that 4th respondent is a 'Konda Kapu'. Once the settlement patta was granted in favour of Dattam Appala Swami—tribal in the year 1935 transfering the land to Challa Adiyya on 02-09-1936 is null and void under Section 4(1) of Act 1/17. Unregistered sale agreement written on 0.25 ps. stamp paper will not acquire any right over the said property to the petitioner. Therefore, petitioner who is a non-tribal and whose possession is unlawful is liable to be evicted.

Sri M.R.K.Chowdary, Senior Counsel contends that Tribunal constituted under Regulation I/59 cannot go into genuineness or otherwise of the transfer effected in the year 1935 nor can give a finding, as the Regulations are prospective in operation and placed strong reliance on the Full Bench judgment of this Court in ***G.NARSA REDDY v. COLLECTOR, ADILABAD DIST.*** for the said proposition. Act 1/17 is not available once they are repealed by Regulation I/59 and the proceedings initiated by the 3rd respondent is without jurisdiction and all consequential orders passed

thereon by the appellate authority as well as revisional authority suffer from the same infirmities and cannot sustainable.

Per contra, learned Government Pleader for Social Welfare contends that transaction was taken place in the year 1965 between the petitioner and non-tribal in whose favour Dattam family transferred the property under a registered sale deed dated 03-09-1936. Since transaction between Dattam family (tribal) and Challa family (non-tribal) is void as per Act 1/17, Challa family will not acquire any right over the suit schedule property to transfer the same in favour of the petitioner.

Regulation 3(1)(b) envisages that until the contrary is proved, any immovable property situated in the Agency tracts and in possession of a person who is not a member of Scheduled Tribe, shall be presumed to have been acquired by such person or his predecessor in possession through a transfer made to him by a member of a Scheduled Tribe. When the petitioner failed to establish the burden cast upon him the courts below rightly ordered eviction, which will not require any interference.

Admittedly, prior to enforcement of Land Transfer Regulation I/59 Section 4 of Act 1/17 prohibits transfer of immovable property situated within the Agency tracts by a member of hill tribe shall be absolutely null and void unless made in favour of another member of hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.

It is appropriate to notice both Regulation 3 of Regulation I/59 and Section 4(1) of Act 1/17:

Sec.4 Transfer of immovable property by a member of hill tribe. (1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.(2) Where a transfer of property is made in contravention of sub-section (1) the Agent or any prescribed officer may on application by anyone interested, decree ejectment against any person in possession of the property claiming the transfer and may restore it to the transferor or his heirs.(3) Subject to such conditions as may be prescribed an appeal against a decree or order under sub-section (2) if made by the Agent shall lie to the State Government and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed.	***Reg.3 Transfer of immovable property by a member of a Scheduled Tribe:*** (1)(a) Notwithstanding anything contained in any enactment, rule or law in force in the Agency tracts, any transfer of immovable property situated in the Agency tracts by a person., whether or not such person is a member of a Scheduled Tribe, shall be absolutely null and void, unless such transfer is made in favour of person, who is a member of a Scheduled Tribe or a society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964 (Act 7 of 1964) which is composed solely of members of the Scheduled Tribes.

"Agency tracts" as defined by Act 1/17 reads as follows:

> "Agency tracts means the scheduled districts as defined in Acts XIV and XV of 1874 and included within the districts of Ganjam, Vizianagaram and Godavari."

Land Transfer Regulation I/59 was came into force on 04-03-1959 in the scheduled areas of East Godavari, West Godavari, Visakhapatnam, Srikakulam districts of Andhra Pradesh. Regulation 3 (1) prohibits transfer of immovable property situated in Agency tracts from a member of Scheduled Tribe to non-tribal without previous consent in writing of the Agent or any prescribed officer. The said Regulation has been extended to the Scheduled Areas of Adilabad, Warangal, Khammam and Mahabubnagar Districts from 01-12-1963.

Regulation 9 repealed Act 1/17 to the extent to which any of the provisions contained therein correspond or are repugnant to any of the provisions contained in Regulation 1/59.

It is appropriate to notice Regulation 10 which saves transaction from the provisions contained in Regulation 1/59, which reads as under:

> "10 (1) (a) any transfer made or sale effected in execution of a decree of before the commencement of the Agency Tracts Interest and Land Transfer Act, 1917 or
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> (b) any transfer made or sale effected in execution of a decree after

> the commencement of the said Act and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the said Act."

It is well settled that judgments of Courts are not to be construed as statute and it must be read as a whole and ratio therefrom is required to be culled out from reading the same in its entirety and not only part of it. A judgment is an authority for what it decides and not what it logically deduced therefrom and it must be in the context in which they have appeared.

In the light of the above statutory provisions and the submissions made it is convenient to lightly touch on facts in the case 1 cited above.

In para-14 of the judgment the Full Bench noticed the object of Land Transfer Regulation I/59 is to regulate the transfers of the land in the Scheduled Areas. The Regulation first came into force in the Scheduled Areas in the districts of East Godavari, West Godavari, Visakhpatnam and Srikakulam. By Regulation II of 1963, the said Regulation has been extended to the Scheduled areas in the districts of Adilabad, Warangal, Khammam and Mahabubnagar. Since transfer of the land having taken place prior to 01-12-1963, i.e. before coming into force of the Regulation, it would not be affected by the said Regulation as it has no retrospective effect and the possession of the petitioners was protected by the provisions of Section 53-A of the Transfer of Property Act and contention of the Government relying on the decision of this Court in ***MERAM POCHAM v. STATE OF A.P*** (AIR 1978 AP 242) though the Regulation was held to be not retrospective in operation, the contract of sale accompanied by delivery of possession having been made without obtaining the necessary sanction under Section 47 of the Hyderabad Tenancy and Agricultural Lands Act and without obtaining a validation certificate under Section 50-B of the T.P. Act, the purchaser would not be entitled to the protection of Section 53-A of the T.P. Act and since Section 47 of the Hyderabad Tenancy and Agricultural Lands Act was deleted the obstruction was removed and the statutory right under Section 53-A would be available to the transferee. In view of the same, Division Bench referred the matter to the Full Bench. The Full Bench after considering the relevant statute and the notification issued under Regulation II of

1963 extending Regulation I of 1959 to the Scheduled Areas in the districts of Adilabad, Warangal, Khammam and Mahabubnagar held in para-25 as under:

> "The question for consideration is, whether the Regulation I of 1959 as amended by the subsequent Regn. II of 1963 and Regulation I of 1970, has retrospective effect and affects transfers made prior to coming into force of the said Regulations. That is, whether the said Regulation would affect transfers made by members of the Scheduled Tribes in the agency tracts of Telangana area prior to 1-12-1963 or to transfers made by lands in the agency tracts by non-tribals prior to the coming into force of the Regulation I of 1970. There is no express provision in the said Regulation giving retrospective effect. Section 2(g) merely defines "transfer" and it includes a contract to sell; but it does not indicate whether it applies to transfers made prior or subsequent to the said Regulation. Section 3 (1) (a) declares that "any transfer of immovable property situated in the Agency tracts by a person, whether or not such person is a member of a Scheduled Tribe…. Shall be absolutely null and void unless the transfer is made in favour of a person who is a member of a Scheduled Tribe or a society mentioned therein." Section 3 (2) (a) applies only to a transfer made in contravention of sub-sec.(1) of Section3. These provisions do not indicate whether they are applicable to transfers made prior to the coming into force of the said Regulation as amended from time to time. The language of Sections 3 (1) (a) and 3 (2) (a) does not expressly give them retrospective effect."

In para-27 it held as under:

> "….The provisions of Section 3 (1) (a) seek to nullify transfers made of lands in Scheduled areas null and void unless the transfer is made in favour of a person or a society mentioned therein. If the provisions of Section 3 (1) (a) are to be given retrospective effect, it will take away or affect vested or accrued rights and the provisions of section 3(1) (a) cannot be construed as having retrospective effect in the absence of express enactment or necessary intendment."

In para-29 it held as follows:

> ".....the provisions of Regulation II of 1963 and the provisions of Regulation I of 1970 amending the provisions of Section 3 (1) of Regulation I of 1959 have no retrospective operation and do not affect transfers made prior to the coming into force of the said amending regulations."

Further, in para-30 Full Bench held as under:

> "The question whether transfers made prior to the coming into force of the amending Regulations II of 1963 and I of 1970 are not valid either for want of registration under the Indian Registration Act or for non-compliance of the provisions of Section 47 or Sec.50-B of the Hyderabad Tenancy and Agricultural Lands Act and whether the transferee would be entitled to the protection of Section 53-A of the Transfer of Property Act, can only be gone into in a forum constituted for deciding such questions in respect of lands in Scheduled areas."

and accordingly answered the reference as under:

> "1.A transfer of immovable property situated in agency tracts, made after the coming into force of the A.P. Scheduled Areas Land Transfer Regulation I of 1959 or its amendment Regulation II of 1963 or Amendment Regulation I of 1970, even if made in compliance with the provisions of the Transfer of Property Act, Indian Registration Act or Hyderabad Tenancy and Agricultural Lands Act or any other law applicable thereto, is null and void, if it contravenes the provisions of S. 3 (1) of the Regulation I of 1959 or its amending regulations, and under S.3 (2) of the said Regulation, the authorities mentioned therein can decree ejectment of the persons claiming under such transfer and pass orders restoring the lands to the transferors or their successors or pass orders for disposing of the said property as directed therein.
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> 2. x x x xx
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> 3.The validity or otherwise of the transfers made prior to S.3 (1) or its amendments by Regulation II of 1963 or I of 1970, coming into force, cannot be adjudicated upon under S.3 (2) of the Regulation and the same has to be challenged in an appropriate forum constituted for deciding disputes relating to immovable property situated in Scheduled Areas."

Sub-section (2) of section 4 of Act 1/17 authorises the Agent or any other prescribed officer on application by any one interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the

transferor or his heirs. Sub-section (3) envisages an appeal against a decree or order under sub-section (2) if made by the Agent shall lie to the State Government and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed.

Regulation 10 of Regulation I/59 saves the transactions which were effected in execution of a decree before the commencement of the Act 1/17 or any transfer made or sale effected in execution of a decree after the commencement of Act1/17 and before the commencement of this Regulation, if such transfer or sale was valid under the provisions of the Act 1/17. Regulation 9 deals with repeal only to the extent to which any of the provisions contained in Act 1/17 correspond or are repugnant to any of the provisions contained in Regulation I/59 as amended by Regulation I/70. In effect, the provisions which are not inconsistent with the Regulation I/59 as amended by Regulation I/70 will continued to be in operation and action for any violation thereof which are not repugnant can be proceed by the said Act by the competent authority.

If that be the case, the transfer which was effected prior to Regulation in contravention of Section 4 of Act 1/17 will if null and void and the said sale is not saved under Regulation 10 of Regulation I of 1959. Both the provisions i.e. Section 4 and Regulation 3 prohibits sale of the land in favour of non-tribal by a trial. In the absence of inconsistency of Section 4 with that of Regulation 3 the same has not been repealed and still continues to have in force.

It is not in dispute that Tribunal is constituted under Regulation I of 1959. Whether the Special Deputy Collector is a prescribed officer to entertain the application and order for decree of ejectment against the petitioner under Act 1/17 is not forthcoming, and the Scheduled Districts Act was enacted barring the jurisdiction of ordinary Courts of Judicature and conferring the same on the officers appointed under the Scheduled Districts Act 14/1874 and will continue to entertain claims for the violations of Act 1/17 has to be decided by the Agent to the Government. If the Special Deputy Collector is not a prescribed officer to entertain such application for violation of Section 4(1) of Act1/17, it is only the Agent who can exercise such

jurisdiction and order for eviction of the unauthorized occupant and order restoration of possession.

In view of the same, the impugned G.O. and order passed by the 1st respondent is set aside and matter is remitted to the Agent to Government—2nd respondent to consider the aspect whether the Special Deputy Collector—3rd respondent is a prescribed officer to entertain the application and can declare the sale as null and void in view of sub-sections (2) and (3) of Section 4 of Act 1/17. If the 3rd respondent is also an officer appointed, he will have the jurisdiction to go into the violations of Section 4 of Act 1/17 and can pass appropriate orders. In the event if the 2nd respondent comes to the conclusion that Special Deputy Collector is not the prescribed authority, it is always open for the 4th respondent to file an application before the Agent to the Government for due eviction and restoration of possession for violation of Section 4 of Act 1/17. In such an event 2nd respondent shall entertain such claim and can pass appropriate orders for due eviction and restoration of possession after following due procedure and giving opportunity to the parties.

The writ petition is allowed as indicated above and no order as to costs.

_____ A.GOPAL REDDY, J.

13-04-2006

Murthy

L.R.copy to be marked.